

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM EXECUTIVE SUMMARY
FOR
ADOPTION OF NEW RULES II AND III AND AMENDMENT OF
17.30.706 ARM**

AGENDA # II.A.2

AGENDA ITEM SUMMARY

The Department requests that the Board adopt New Rules II and II, which create a classification for coal bed methane produced water holding ponds and standards to support the designated uses of those ponds, and amend 17.30.706 ARM pertaining to nondegradation non-significance determinations.

LIST OF AFFECTED RULES

ARM 17.30.706

AFFECTED PARTIES SUMMARY

The proposed new rules could affect parties that will be discharging coal bed methane produced water to holding ponds or surface water in the Powder River, Little Powder River and Rosebud Creek drainages.

SCOPE OF PROPOSED PROCEEDING

The Department requests that the Board adopt New Rules II-III and the amendments to ARM 17.30.706.

BACKGROUND

At its April 11, 2003 meeting, the Board deferred consideration of New Rules II and III and the amendment of ARM 17.30.706 in view of the recent decision of the Ninth Circuit Court of Appeals in *Northern Plains Resource Council v. Fidelity Exploration and Development Company*. In May, the Ninth Circuit issued an Order staying its ruling that discharges of coal bed methane water contained "pollutants" and are subject to federal permitting requirements. Consequently, the Department is requesting that the Board adopt New Rules II and III, which would create a new water-use classification and standards for CBM produced water that is held in constructed ponds and reservoirs. Since CBM water held in ponds and reservoirs will not be suitable for fish and only marginally suitable for aquatic life and agricultural use, the Board is proposing to adopt a new water-use classification in Rule II for these ponds. Under proposed New Rule III, the designated uses of CBM produced water held in ponds and reservoirs, which are not located in natural drainage basins, will be limited to watering livestock and wildlife, secondary contact recreation (such as boating or wading) and will be designated marginally suitable for aquatic life (not including fish) and agricultural use.

The Department also requests that the Board modify ARM 17.30.706 so that the Department will be required to conduct a non-significance determination for discharges of CBM water. This significance

determination will allow the Department to include conditions, including requirements for monitoring, that will serve as before-the-fact limitations on water quality impacts to the receiving waters. This modification will not result in a duplicate requirement with respect to MPDES permits. Rather, this modification will be used only if a discharge permit is not requested. If a permit is not requested, the Department will be required to conduct a non-significance determination, which will ensure compliance with the nonsignificance criteria and water quality standards adopted by the Board.

HEARING INFORMATION

No further hearings are necessary.

BOARD OPTIONS

The Board may:

1. Adopt the rules and the modification.
2. Modify the rules and the modification before adopting them.
3. Not adopt the rules and the modification.

DEQ RECOMMENDATION

The Department recommends that the Board adopt the Rules and the modification.

ENCLOSURES

The following information is attached to this summary:

- 1 Draft Notice of Amendment and Adoption
2. 521/311 Analyses